

**Nakash, Inc. a Subsidiary of Famous Horse, Inc.
d/b/a V.I.M. Jeans and United Crafts & Industrial Workers Union, Local 91. Petitioner. Case
29-RC-6018**

31 August 1984

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 26 October 1983 the Regional Director for Region 29 issued his Decision and Direction of Election in the above-entitled proceeding in which he found appropriate for collective-bargaining purposes a separate single retail store unit including all salesclerks, cashiers, stockroom personnel and general helpers at the Employer's store located at 436 Knickerbocker Ave., Brooklyn, New York. Thereafter in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election, on the grounds that the Regional Director made factual errors and departed from precedent.

On 23 November 1983 by telegraphic order, the request for review was granted on the issue of whether the Regional Director erred in finding the single-store unit to be appropriate.

The Board has considered the entire record in this case and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer, a New York corporation, operates a chain of retail stores selling jeans and tennis shoes at nine locations in the New York City metropolitan area, including one in Manhattan, two in Queens, one in the Bronx, and five in Brooklyn, New York, including the location involved herein. The Employer has an office located in Rego Park, New York. The Employer employs about 300 employees, although the record does not state how many work at the Knickerbocker Avenue store. There is no history of collective bargaining for any of the Employer's employees. Each store has a manager and some stores also have an assistant manager, while all stores employ similar classifications of hourly employees.

The Petitioner seeks an election in one separate unit at the Knickerbocker Avenue store.¹ The Employer contends that the single-store unit is inappropriate. The Employer further contends that the smallest appropriate unit would be one which included all nine of the Employer's stores located within the metropolitan area which are centrally managed and whose employees together share a community of interest.

The Employer's stores all attempt to follow the same physical layout with jeans in the front of the store, tennis shoes towards the rear, dressing rooms on the right, and chairs on the left. All nine stores carry centrally purchased merchandise which is centrally tagged with labels which carry the words "VIM Stores." No store may purchase goods, although there may be variations among the store prices to reflect competition in that store's area. Any price variations are centrally controlled. For convenience, price tags are affixed at each store. The stores advertise on a chainwide basis.

The Employer's management hierarchy is located in the Employer's main office in Rego Park, New York, and is dominated by the president of Famous Horse, Inc., Yosef Yosef. The record discloses that Yosef along with two other supervisors, Yoav Nadav and Stanco Trajan, supervise all the stores. They shuttle between the stores on a daily basis and go over payrolls, check orders, and examine equipment. They observe and discuss the operation of each store with the store manager. They review personnel matters including the hiring and firing of employees. Yosef is involved in all decisions concerning final disciplinary warnings and discharges. In addition to the duties relating to the store they happen to be in, they may also transact business on behalf of the entire chain by meeting with salesmen or planning advertising campaigns.

The record reveals that all nine of the Employer's stores are controlled very closely by Yosef and the central office. All employees have similar skills, work classifications, and working conditions. All wages and benefit plans are centrally set and the salaries of employees in all nine stores are similar. The staffing levels and operating hours of each store are centrally set and are generally uniform throughout the chain. Payroll and hiring quotas are controlled from the main office. All personnel records are located at the office rather than in the stores.

¹ The unit sought was:

All sales clerks, cashiers, stockroom personnel and general helpers employed by the Employer at its store located at 436 Knickerbocker Avenue, Brooklyn, New York, excluding all other employees, assistant store manager, office clerical employees, guards and supervisors as defined in the Act.

Additionally, the individual store manager's autonomy is severely circumscribed by the authority retained by Yosef and the two supervisors as well as by the centrally determined policies. The record discloses that the manager of the Knickerbocker Avenue store, Elly Hirel, receives guidance from central management as to how many people he may have on the payroll at any one time. A decision whether to increase or decrease the staff at a store is centrally made and implemented by the manager. Hirel confers daily with a member of the management team who reviews all decisions regarding hiring and firing. He cannot grant a wage increase or schedule vacation time for employees without prior approval. Even though he hires individuals for his store he must adhere to the established guidelines. In addition to the nine store managers, a relief manager rotates from store to store and has exactly the same authority as each store manager.

After employees are hired they are usually trained in the store where they work but, on occasion, employees have been trained in one store and then assigned to work in another. The staff for a new store is trained in the Employer's existing stores before the new store opens. There have been some instances of temporary and permanent transfers of employees between existing stores.

The single plant, or in this case retail store, is a presumptively appropriate unit for collective-bargaining purposes unless it is established that the single store has been effectively merged into a more comprehensive unit so as to have lost its individual identity. *Frisch's Big Boy Ill-Mar*, 147 NLRB 551 (1964); *Haag Drug Co.*, 169 NLRB 877 (1968). However, the Board "has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interest' of the employees sought have been 'obliterated.'" *Big Y Foods*, 238 NLRB 860, 761 fn. 4 (1978).

The Regional Director found the requested single-store unit appropriate based on the degree of autonomy possessed by the store managers, the lack of compelling evidence of substantial employee interchange between the stores, and the absence of any history of collective bargaining on an overall basis.

In *Kirlin's Inc.*, 227 NLRB 1220 (1977), the Board, in disagreement with the Regional Director, found the requested single-store unit inappropriate. The Board dismissed the petition based on evidence of centralized management of labor relations, commonality of supervision, interchange of em-

ployees, identical employee functions, terms and conditions of employment, limited personal authority of each store manager, and the proximity of the two stores in the same shopping mall. Most of the factors found determinative in *Kirlin's* are also present in the instant case. The nine stores are virtually identical in layout, share a close geographic proximity (two stores are on the same street in Brooklyn), are centrally controlled in merchandising, pricing, and personnel relations, and the managers have limited personal authority. Although there is no evidence of substantial employee interchange, some transfers do occur. Viewed against the background of the highly centralized administration of all nine stores, the daily contact with Yosef and the other supervisors and the restricted authority of the store manager, the fact that there is not substantial employee interchange pales in its importance to the determination of the issue.

The Board also found inappropriate a requested single-store unit in *Super X Drugs of Illinois*, 233 NLRB 1114 (1977). The Board denied the unit based on the lack of store manager authority, geographic proximity of the employer's Cook County stores, and the interchange of employees among those stores. The autonomy of the store manager with respect to personnel matters was severely circumscribed by the authority retained by the district manager. There the store manager had ready telephonic communication between the store and district managers. In the instant case either Yosef or one of the supervisors actually makes daily visits to each of the stores. Additionally the relief manager, who rotates between the stores on the various managers' days off, has the same authority as the store manager in his absence.

In both *Super X* and the instant case, the store manager's limited authority is established in that the district manager or supervisor (the next level of management) has the final decision-making authority in disciplinary actions and approval must be received from the central management to grant store employees' leaves, vacations, promotions, and pay increases.

In *Gray Drug Stores*, 197 NLRB 924 (1972), the Board, in holding that single-store units were inappropriate, found significant the lack of autonomy at the single-store level reflected by strict limitations of the store manager's authority in personnel, labor relations, merchandising, and the extensive role of the district manager in the day-to-day operation of the stores. The Board concluded that "the store manager's authority is shared with the district manager to a degree negating any conclusion that the

single stores are separate economic units.”² Where the local manager’s authority is highly circumscribed and there is a large degree of centralization of administrative functions, the Board has found the presumption of the appropriateness of the single-store unit has been rebutted.³ The facts in the instant case establish that the Employer’s nine stores similarly experience a high degree of centralization and that the store manager’s authority is similarly tightly circumscribed.

Upon these facts we find, in disagreement with the Regional Director, that the requested single-store unit is inappropriate. As the Petitioner has made no alternative unit request, we shall dismiss the petition.

ORDER

It is ordered that the instant petition is dismissed.

MEMBER ZIMMERMAN, dissenting.

I dissent from my colleagues’ dismissal of the election petition in this case because they believe that the petitioned-for single-store unit is inappropriate. I find, rather, that the record fully supports the findings of the Regional Director in his Decision and Direction of Election, and I agree with his conclusion that the Employer has not effectively rebutted the presumptive appropriateness of the requested single retail store unit.

My disagreement relates, specifically, to the degree of autonomy enjoyed by the individual store manager. While the majority finds the store manager’s autonomy severely circumscribed by the authority retained by the Employer’s top management, to a degree negating any conclusion that the single stores are separate economic units, I disagree and find the record to show that the store manager retains major control over labor relations in his store.

Thus, the Regional Director found and the record indicates that Elly Hirel, store manager of the Knickerbocker Avenue store, at issue herein, hires and fires employees, assigns work schedules, rates employee performance and decides who will get wage increases, and handles the day-to-day problems of the store, including employee grievances. While my colleagues place great emphasis

on the fact that the Employer’s president, Yosef Yosef, tells Hirel how many employees may be hired, as well as when he wants employees laid off, Yosef testified that it is Hirel who makes the decisions as to whether to hire a specific individual and who exactly will be laid off. Yosef further testified that, even though Hirel cannot grant a raise without consulting him, it is Hirel who rates employees’ performance and recommends who should get raises, as Yosef does not know individual employees. Hirel also has the authority to independently discipline employees, without speaking with Yosef or getting his approval to do so.¹

Additionally, though Yosef testified that he and two other top management supervisors working at the Employer’s main office shuttle between the Employer’s nine New York City stores, nowhere does the record indicate that one of them is in the Knickerbocker Avenue store every day. Rather, when asked at the hearing how often these three supervisors go to the individual stores, Yosef replied: “I’m working 6 days a week and every day I’m at the stores. Again, it depends on how much work there is to do.” Even the Employer in its request for review of the Regional Director’s decision does not claim that either Yosef or one of the two other control management supervisors actually make daily visits to each of the stores, as the majority finds, but asserts only that “Control Management shuttle between stores on a daily basis.” Three individuals who shuttle between nine stores located throughout the New York City metropolitan area, in addition to ordering merchandise, handling payrolls, checking orders and equipment, and transacting business such as planning advertising campaigns on behalf of the entire chain, do not, in my view, constitute such circumscription of Hirel’s admittedly unfettered hiring, firing, and grievance resolution authorities as to negate his control over labor relations in his store. I find nothing in the record relating to the Employer’s centralized recordkeeping, merchandising, and oversight of its stores which outweighs the fact that the store manager is vested with the authority to run his store and control the employees in it.

Accordingly, I dissent from my colleague’s decision and would adopt the Regional Director’s decision and direct an election.

² Id. at 925.

³ *Purity Supreme, Inc.*, 197 NLRB 915 (1972), and *Petrie Stores Corp.*, 266 NLRB 75 (1983).

¹ All of the above is based on Yosef’s uncontradicted testimony, as he was the only witness at the hearing.